

**MINUTES**

**MONTANA SENATE  
59th LEGISLATURE - REGULAR SESSION  
SUBCOMMITTEE ON SB 146 -- JUDICIARY**

**Call to Order:** By **SEN. DAN MCGEE**, on February 8, 2005 at 5:07 P.M., in Room 303 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Dan McGee, Chairman (R)  
Sen. Mike Wheat (D)  
Sen. Jesse Laslovich (D)  
Sen. Lynda Moss (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Branch  
Mari Prewett, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Subcommittee discussion on amendments to SB 146

**Valencia Lane, Staff Attorney, Legislative Services Division (LSD)**, said that at the first Subcommittee meeting, **Jacqueline Lenmark, American Civil Liberties Union (ACLU)**, gave the Subcommittee five sets of amendments which were segregated by subject matter. She took **Ms. Lenmark's** amendments and put them in bill drafting form without substantive changes. **(Refer to Exhibits #1 through #5 from the February 4, 2005, Subcommittee meeting.)** **Ms. Lane** explained the contents of the five amendments and presented a "gray bill", with several appendices, noting within the bill where those amendments would fall.

**EXHIBIT(jus31b01)**

***{Tape: 1; Side: A; Approx. Time Counter: 7.4 - 10.4}***

**Ms. Lane** also explained three amendments prepared by **Sheri Heffelfinger, Research Analyst, LSD**. SB014601.ash includes technical and cleanup amendments requested by **SEN. JOHN ESP, SD 31**. SB014603.ash include directions for the Code Commissioner to change any references to "court-appointed counsel", "court-appointed attorney", "appointed counsel", or "appointed attorney" to "assigned counsel" or assigned attorney" in all legislation enacted by the 2005 Legislature. SB014604.ash includes internal reference changes along with the changes requested by **SEN. MCGEE** regarding the audit of the state, city, and county public defender expenditures.

**EXHIBIT(jus31b02)**

**EXHIBIT(jus31b03)**

**EXHIBIT(jus31b04)**

***{Tape: 1; Side: A; Approx. Time Counter: 10.4 - 18.7}***

Referring to previous testimony, **SEN. LYNDA MOSS, SD 26**, had concerns with cities and counties being charged for the cost of the public defender expenditure audit. **SEN. MCGEE** said the Legislature has been trying for years to get its arms around numbers. The only way he knows of to do it in a reasonable fashion is through audits by the **Legislative Audit Division (LAD)**. In that regard, it is a legitimate expense to the jurisdiction to ensure that the audit is conducted.

Questions were raised on how the costs of the audits were going to be apportioned. **SEN. MCGEE** said, actual-expense, based upon the time spent by the LAD. He felt that once a formula for the audit was established, the costs would be minimal. He suggested going forward with the proposed amendment, knowing that the cost question was still unanswered. **Ms. Heffelfinger** said that the LAD

plans to out-source or contract for the audits and pay contractors in the local areas because they do not have the staff or ability to cover it. **SEN. WHEAT** said, if that was the case, he would like to hear from **Scott Seacat, Legislative Auditor**, about how the LAD anticipates the audits to be conducted and the payment process for them.

Questions were raised about the portion of amendment #SB014604.ash relating to the information on actual county expenditures for district court public defender costs provided by the Court Administrator's Office because not all of the costs have been reimbursed. **SEN. MCGEE** said, that is precisely why the audits are needed.

***{Tape: 1; Side: A; Approx. Time Counter: 18.7 - 24.6}***

Speaking about the makeup of the proposed commission, **SEN. MCGEE** said that once the commission has been in existence for a year or two, it can be reduced to a lower number for administrative purposes. Once the public defender system is set up, it will not take all of the commission members to administer. **Ms. Lenmark** said that the idea makes sense, and she anticipates that **Ms. Bucy** will have draft language to review at a later date. She felt that the ACLU could agree with those concepts.

***{Tape: 1; Side: A; Approx. Time Counter: 24.6 - 29.8}***

**Motion/Vote:** **SEN. WHEAT** moved the approval of amendment #SB014602.av1. Motion carried unanimously by voice vote.

**Motion:** **SEN. WHEAT** moved the approval of amendment #SB014603.av1.

**Discussion:** **SEN. MCGEE** asked about the purpose of the "partial indigence" deletion from SB 146. **Ms. Lenmark** said that in the original draft of SB 146, there was a mechanism in place to collect fees from individuals. The whole collection mechanism is very difficult to administer, not very effective, and very troublesome for counties to do. It was the determination of the ACLU and DOJ that it would be cleaner and simpler to create a definition of "indigence" that would apply. Secondly, there is no good data available on the size of the population that would fall into the "partial indigence" definition. It was determined that it would be better to work with the solid number of 133% of poverty. After the program has some history, reliable numbers will be available for the Legislature if it chooses to expand the program to "partial indigence".

**SEN. WHEAT** said that SB 146 had several reporting requirements placed upon the public defender related to caseloads, etc. He

felt it better to make the system as simple as possible while it is being established.

***{Tape: 1; Side: B; Approx. Time Counter: 5.2 - 21.5}***

**SEN. MCGEE** asked if it was decided that the Courts would assess the indigent fee. **Ms. Heffelfinger** said that SB 146 lays out the criteria necessary for the fee assessment. The contribution amount must be a total flat dollar amount determined according to a sliding scale based on gross household income and other factors.

**Vote:** **SEN. WHEAT'S** motion to approve amendment #SB014603.avl carried on a 3 to 1 voice vote with **SEN. MCGEE** voting nay.

**Motion:** **SEN. WHEAT** moved the approval of amendment #SB14604.avl.

**Discussion:** **SEN. WHEAT** said that although he understands the need for a firewall between the appellate division and the trial division, he is unsure whether the amendment would increase the number of people within the public defender system. He asked why the amendment was needed. **Ms. Lenmark** said that the office of appellate defender will be subordinate to the chief public defender. It was the ACLU's and DOJ's belief that it would not increase the cost because it would take an appellate function out of the regional offices and place the work under the chief appellate defender. Secondly, appellate work is different in character than trial work, and some individuals may be better suited to do appellate work than trial work. The amendment provides the framework for that to happen.

**SEN. MCGEE** asked if the Office of Budget and Program Planning (OBPP) saw any problems with the proposed amendment. **Brent Doig, OBPP**, said, no, there was a component identified in the fiscal note with regards to costs associated with the appellate defender's office.

**Vote:** **SEN. WHEAT'S** motion to approve amendment #SB14604.avl carried unanimously on a voice vote.

***{Tape: 1; Side: B; Approx. Time Counter: 11.6 - 11.8}***

**Motion/Vote:** **SEN. WHEAT** moved the approval of amendment #SB014605.avl. Motion carried unanimously by voice vote.

**Motion:** **SEN. WHEAT** moved the approval of amendment #SB014606.avl.

**Discussion:** Ms. Lane said that the amendment refers to **NEW SECTION 4 -- Statewide system -- structure and scope of services -- assignment of counsel at public expense**. Courts may order the office to assign counsel for certain cases, and one was missed within the list. **NEW SECTION 6 -- Commission -- duties -- report -- rules** adds practice standards to the proposed commission's duties and approves any proposal to create permanent staff positions.

**SEN. MCGEE** asked why the language was changed to "create permanent staff positions". **Ms. Lenmark** said that **NEW SECTION 6** provides a description of the commission's duties. Staff is hired by the chief public defender or the deputy defenders. Stakeholders believed that the purpose was to have the commission approve whether there should be permanent hires or contract services.

**Ms. Lane** added that the amendment also allows the commission to establish policies and procedures to ensure that detailed expenditure and caseload data is collected and requires that the report to the commission must cover the preceding biennium and include the provisions of Appendix B.

**Vote:** SEN. WHEAT'S motion that amendment #SB014606.av1 be approved carried unanimously by voice vote.

**Motion/Vote:** SEN. WHEAT moved the approval of amendment #SB014607.av1. Motion carried unanimously by voice vote.

**Motion:** SEN. WHEAT moved the approval of amendment #SB014601.ash.

**Discussion:** Ms. Heffelfinger said that the amendment refers to SEN. JOHN ESP'S, SD 31, children and families bill that called for indigent defense early on. He wanted the exact language.

**Vote:** SEN. WHEAT'S motion that amendment #SB014601.ash be approved carried unanimously by voice vote.

**Motion/Vote:** SEN. WHEAT moved that amendment #SB014603.ash be approved. Motion carried unanimously by voice vote.

**Motion/Vote:** SEN. WHEAT moved that amendment #SB014604.ash be approved. Motion carried unanimously by voice vote.

*{Tape: 1; Side: B; Approx. Time Counter: 21.5 - 30.2}*

**Motion/Vote:** SEN. WHEAT moved that the Subcommittee entertain a DO PASS AS AMENDED motion on SB 146 to the full Senate Judiciary Committee. Motion carried unanimously by voice vote.

**SEN. WHEAT** suggested that if the stakeholders had further suggestions, bring them forward. He said that once SB 146 leaves the Subcommittee, it will move very fast.

**Ms. Lenmark** requested that she be allowed to come back and further discuss amendment #SB014605.avl--the cost allocation amendment.

**ADJOURNMENT**

Adjournment: 6:45 P.M.

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SEN. DAN MCGEE, Chairman

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MARI PREWETT, Secretary

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LOIS O'CONNOR, Transcriber

MW/mp

Additional Exhibits:

**EXHIBIT ([jus31bad0.PDF](#))**